

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHAUNCEY GIRARD,

Plaintiff,

- against -

ERIC GUTWEIN, FRANK POLTCO,
JAMIE LAMANNA, TINA TOMAS,
CHAUNTEL ELMORE, ELVIS RIOS,
MICHAEL BLOT, AND EDWIN UZU,

Defendants.
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DEFENDANTS' ANSWER

20-CV-5883 (CS)

Jury Trial Demanded

Defendants Eric Gutwein, Frank Polito, Chauntel Elmore, Elvis Rios, and Michael Blot (collectively, defendants) , by their attorney, LETITIA JAMES, Attorney General of the State of New York, as and for their answer to the amended complaint dated 5/7/2021 and the second amended complaint dated 3/15/2022, state as follows:

Legal Basis for the Complaint, Part I

1. Defendants deny the merits of the legal basis for the amended complaint

Plaintiff Information, Part II

2. Defendants admit the information contained in the Plaintiff Information section of the amended complaint.

Prisoner Status, Part III

3. Defendants admit the information contained in prisoner status of the amended complaint.

Defendant Information, Part IV

4. Defendants admit that defendants 1, 2, 3, 4, and 6 are parties to this amended complaint and deny that Defendants 5, 7, and 8 are parties to this amended complaint.

Statement of Claim, Part V

Facts

5. Defendants deny the allegations contained in the Facts Section of the amended complaint.

Claims

6. Defendants deny the allegations contained in the First Amendment Claim section of the amended complaint.
7. Defendants deny the allegations contained in the Eighth Amendment Claim section
8. of the amended complaint
9. Defendants deny the allegations contained in the Failure to Intervene/ Deliberate Indifference section of the amended complaint.
10. Defendants deny the allegations contained in the Violation of Due Process/Conspiracy section of the amended complaint
11. Defendants deny the allegations contained in the Sexual Assault/Failure to Intervene section of the amended complaint.

Injuries

12. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in the Injuries section of the Complaint.

Relief, Part VI

13. Deny that plaintiff is entitled to any of the relief requested in this or any other section of the Complaint.

Certificates and Warnings, Part VII

14. Deny knowledge and information sufficient to form a belief as to the truth of the allegations in the certificates and Warnings section of the Complaint.

Amended Complaint

Facts

15. Defendants deny the allegations contained in the Facts Section of the Amended Complaint.

Violation of Due Process

16. Defendants deny the allegations contained in the Violation of Due Process Section of the Amended Complaint.

Relief

17. Defendants deny that Plaintiff is entitled to relief, as contained in the Wherefore section of the Amended Complaint.

DEFENSES

AS AND FOR A FIRST DEFENSE

18. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE

19. Defendants are entitled to qualified immunity.

AS AND FOR A THIRD DEFENSE

20. To the extent plaintiff raises state law claims, they are barred by Section 24 of the New York State Correction Law, by the Eleventh Amendment, and by other state law.

AS AND FOR A FOURTH DEFENSE

21. Defendants at no time acted willfully or maliciously in disregard of plaintiff's constitutional rights and plaintiff, therefore, is not entitled to punitive damages or other relief.

AS AND FOR A FIFTH DEFENSE

22. Any injuries that might have been sustained by plaintiff as a result of defendants' actions or failures to act were the result of a lawful and proper use of force by them or others or pursuant to valid penological interests.

AS AND FOR A SIXTH DEFENSE

23. One or more of the defendants were not personally involved in the acts alleged to have injured the plaintiff.

AS AND FOR A SEVENTH DEFENSE

24. The alleged conduct was properly within the discretionary authority committed to defendants to perform their official functions and the relief prayed for would constitute an improper intrusion into said discretionary authority.

AS AND FOR AN EIGHTH DEFENSE

25. Plaintiff's claims may be barred, in whole or in part, by the Prison Litigation Reform Act for failure to exhaust administrative remedies.

WHEREFORE, defendants respectfully request that this Court dismiss the Complaint and Amended Complaint in its entirety, and grant such further relief as the Court deems just and proper.

Dated: White Plains, New York
November 23, 2022

LETITA JAMES
Attorney General of the State of New York
Attorney for Defendants

BY: *Rachel Zaffrann*

Rachel Zaffrann
Deputy Assistant Attorney General
44 S. Broadway, 5th Floor
White Plains, New York 10271
(914) 422- 8755